DNR-FREP Reform Report by comment-issues

Landowner Eligibility

**Property passed down to children should be eligible

**Support excluding non-profits from eligibility- Non-profits should qualify if funding is available.

Any eligible landowner should be eligible if there is any taking involved

Need further clarification of sibling/spouse suggestion-what about LLC's or partnerships, minor owners in partnerships-stock in timber companies?

**Property passed down to children should be eligible

+Remove the eligibility issues by supporting 20 acre exempt harvest rule as proposed by WFFA-expand who is eligible for

Item #2, page one. Verification at FPA date and easement date -support

Item #3, page one. Support- no Forest practice violation

Item #4, page one. Support ownership prior to 3/20/2000

Support excluding nonprofits from program - moving to eligibility from a priority

- your #2 requiring "small" verification at time the acquisition is funded conflicts with the stated Eligibility Provision "at time of submission". Additionally, as funding could be many years after "submission" it's unreasonable/unfair to in effect change the eligibility after the harvest & submission when ownership of the property could have changed hands for numerous reasons, including death.

- Your #3 has a similar after the fact problem about potential outstanding infractions that may occur well after the harvest and FREP "submission".
The good guy sentiment is understood, but FREP is about mitigation for trees required to be left, not the quality of the landowner. Forest Practice violations have existing processes and penalties for resolution that do not seem to need additional penalties to appropriately resolve. These recommendations are supposed to be about improving FREP, not helping solve other forest practice issues.

- Your #4 is understandable to try to prevent theoretical "gaming" of the system over time but is clearly creating a new limitation after the fact. Folks have made land purchase decisions since March 20, 2000 based on current rules/programs – changing the rules retroactively is not right & perhaps not legal? Under no circumstances should the ownership eligibility date be any sooner than the effective date of any new rules.

- The last bullet about excluding non-profits makes sense for a program intended for

private/for profit forest owners, especially when funds are limited. If included, it seems the intent of this bullet should be included in the Eligibility provisions.

SFL Item #1, page one. Landowner does not support eligibility requirement concerning aggregate ownership.

Property Eligibility

SFL Easement conservation specific to FREP area

**Do not support tax status is forest land or open space timber or open space- No tax status

**Agriculture lands, Agriculture open space tax status should be supported and included.

***ownership acquisition date should be open-no date associated with time of purchase

**Qualifications leave the door open reference RCW 76.13.120 (2)

- Your #1 to exclude unstable slope areas is a huge disservice to those "smalls" that have this type of land society wants to keep forested. This is a "take" just as the increased RMZ's that are both clearly disproportionate impacts on smalls. Additionally the interpretations/rules around unstable slopes are clearly getting more restrictive which will increase the disproportionate impacts on those "smalls" with this type of land as they are unable to average their losses over thousands of acres.

- Your #3 to include only that timber which is in current use tax categories sounds well intended and ok on the surface but there are three major reasons this change should not be made: 1.AFREP is about the amount of timber left standing for environmental reasons and has nothing to do with the lands tax status. 2.AThere are numerous reasons landowners chose not to avail themselves of the current use tax programs, reasons that may have very little if anything to do with their commitment to staying forestry – a commitment that is more ensured with the FREP process. Right or wrong, these folks are already paying higher taxes on their forest land than many of the rest of us – why should we penalize them further, for reasons not related to the tree's left in the RMZ for 50 more years? Additionally, at least 2 counties on Westside are actively looking for ways to exclude potentially unproductive/unharvestable portions of our land from the Designated Forestland classification – they are arguing that RMZ's can't be harvested therefore not eligible for current use tax programs (Grays Harbor); land under/in power/pipeline right of ways can't grow or harvest timber so should not be in the current use tax programs (Lewis County). If Counties are increasingly successful in this direction, none of the RMZ's would be eligible for these current use programs, and therefore not eligible for FREP if this revision goes through.

- I don't understand the problem #2 is trying to fix? Sounds like we are trying to punish those that voluntarily/mistakenly put conservation easements on the land? Are we punishing benevolent behavior?

Prioritization

**What certification programs are eligible?-should include ATFS- Support forest certification element

I am a life member of the Washington Farm Forestry Association. I protest this process. I am an interested stakeholder in the Forest Riparian Easement Program (FREP) but have been given little notice to prepare and respond. The FREP was the heart of the agreement with WFFA members during the negotiations of the Forest and Fish agreement in 1999. The Washington Farm Forestry Association has been involved in this prioritization discussion with DNR since DNR's Heath Packard and Commissioner Goldmark suggested it in a meeting in the fall of 2009. We have continued to challenge DNR's suggestion that prioritization of FREP occur and the legislative proviso that followed. We asked the DNR to intervene when the Senate Budget Proviso language came out. It seems clear that Commissioner Goldmark doesn't really want to work in a constructive way with the Family Forest Landowner of the state to keep their business viable. Instead by encouraging this legislation the Commissioner is doing serious damage to the small forest landowners. This type of back stabbing by the Commissioner and DNR staff only convinces me and many other landowners across the state that DNR's Commissioner Goldmark and the State of Washington's word is "NO GOOD" and they can't be trusted. WFFA have sent letters to both DNR and the Governor's office explaining that this language will cause great harm to the small family businesses of tree farming already disproportionately impacted by the Forest and Fish Rules. If you want to prioritize the FREP and can't or won't pay the money due these family businesses I suggest that DNR prioritize if the Riparian tree needs to be left. If it's not a priority to pay the money you rightly owe families across the state than it doesn't seem I should have to leave those trees. This prioritization was not the original intent of Forest and Fish Rules and is a sad state of affairs. A HCP by Federal definition is supposed to be a voluntary agreement. WFFA agreed to the FFR agreement in 1999 because the State of Washington promised to compensate family businesses for the taking of their trees. This nonpayment by the state is a clear breach of the FFR contract. The FREP was to provide economic relief in the form of payment of half of the timber in the stream buffers. It was a payment for a 50 year conservation easement. Prioritization pits one good tree farmer against the other! The reason given to prioritize FREP is based on unsubstantiated claims of illegal FREP requests. We challenge these unsubstantiated claims. Commissioner Goldmark said that he would stand on good science. Good science is verifiable facts. These claims have not been verified. And even if ALL of the unsubstantiated claims were verified, it would only total 4% of FREP, leaving 96% of FREP as having properly purchased conservation easements from small forest landowners. This met the intent of Forest and Fish. I understand that the DNR must meet the requirements of this legislative directive that they encouraged. I suggest that if you really want to support small forest landowners that you tell the legislature that prioritization of FREP is wrong and that you work with officers and staff of the Washington Farm Forestry Association to "reform" FREP as the WFFA tried to do with legislation in 2007 and again in 2008. Show us that DNR cares about the great burden that Forest and Fish has placed on the backs of small forest landowners, and that you are willing to correct the FREP issue without further undermining our economic and private forestland ownership rights.

While I can see some logic for some/many of these from a "grant" standpoint, they all have problems of fairness for a migration program we negotiated and the legislature (& other stakeholders) promised as part of the consensus agreed to that was critical to the passage of Forest and Fish.
The FFFPP is an example of a grant program that is appropriately prioritized based on the most benefit to the resource – are we next going to start adding more litmus tests to this program also? At the request of DNR leadership the landowner caucus of the SFLO Advisory Committee spent several hours in a bona-fide attempt to prioritize the wait list using criteria other than first come, first serve. As we dug deeper into the various ideas it became clear that first come, first serve was the only priority that would not screw some landowners for reasons that had nothing to do with the value of the timber or the disproportionate impact that is the basis for this program. Regardless of how reasonably sounding or politically correct some other criteria sounded they all pitted one "small" forest owner against others for mostly political (not resource protection) reasons in a process that will substantially:

1. increase the cost/complexity of administering the program,
2. increase, not decrease the "gaming" that some think is already going on, and
3. increase the unreliability/predictability of this program for those it's intended to serve.

**Greatest risk of conversion is good to have

• Who's going to decide whose property is providing the most ecological benefits? What kind of process is going to be used to determine "most" ecological benefits? Doesn't this pit those with larger ownerships & RMZ's against those who have smaller ownerships and RMZ's – how is that fair or right? This invites perceived regulatory abuse/favoritism and like the other criteria creates administrative/process problems while inviting disputes.

1st come, 1st served. Should be 95% of the points

***Risk of conversion and ecological value is too subjective-remove from proposal

If ecological benefit is used must deal with through the law-change the rule to capture importance of ecological protection- ecological importance must mimic regulator protection

• Who's going to decide whose property is more subject to conversion? Who is going to pay for & maintain such a highly technical and subjective data base? This is problematic for administrators and sure to be a bone of contention for everyone on the list.

Re: DNR Recommendations for FREP Reform

I consider the DNR Recommendations for FREP Reform as an insult to all small forest landowners. The legislature and DNR are breaking promises made during the formation of the Forest and Fish Laws. The DNR recommendations for FREP Reform are so restrictive that they kill the program – probably DNR's intent.
I purchased forestland in 1977, 2000, 2005 and 2008. The last three purchases were made with consideration of FREP making the land worth keeping in a timber status. Under the DNR

Recommendations for FREP Reform, none of these three parcels would be eligible for FREP. The provision to use only stumpage values (to value FREP payments) is just another way to pay small forest landowners less than their trees are worth. I make my decisions based on the economics of my possible choices. The legislature and DNR are naive if they think I will keep unharvestable land (due to government rules) in timber if it will not qualify for FREP. All of my land has waterfront and is desirable both for recreation and building sites. There are many options available to me. They include development and farming where I can grow crops right down to the waterline. I have lost faith in both DNR and the Washington State Government. There appears to be little honesty or integrity, shame on you both.

**no on priority on impact of rules, % of value of regulatory impact

• Giving "highest priority" to applications that include "one or more", doesn't address how those in the "highest priority" category are going to be prioritized. If those in the "highest priority" category are prioritized by application date that's one thing – if those within the "highest priority" category are going to be ranked by other criteria (other than application date) this proposed draft is incomplete & overly vague – leaving the program open for perceived abuse/misunderstandings/complaints/claims from the landowners (customers). I see a need for a "dispute resolution" process if unclear (& unfair) prioritization is adopted!

**Remove risk of conversion from list- do not support.

Liability and Legal cost increases with prioritization process

Remove the" no FREP ever" priority recommendation

Full disclosure of point system

FREP is already prioritized by 1.) SLO > 20 acres 2.) Riparian areas 3.) $.50 on the dollar (or 50 to 89%)

** no to new priority system

Focus priorities on positive criteria-inclusive language not exclusive

How is a point system going to be created that works? What is the problem we are trying to solve?

Total Forest and Fish package contains an existing prioritization. Forest and fish included the ecological value and importance in HCP. FREP was part of the Forest and Fish deal, prioritization is breaking the promise.

There doesn't appear to be any benefit to priority to environment or cost savings to the state with prioritization

**Highest concentration of SFL in watershed is a bad idea-remove

Support greatest proportion of riparian buffer area affected compared to FP application area

• Giving new FREP applicants priority over others who have already received mitigation payments, sounds good because I've never applied for the FREP – because I haven't (yet) left tree's to further protect public resources, or perhaps because I own less (or younger) forest land than other "small" landowners. Maybe this makes sense for a grant program where the government is trying to encourage more folks to join the program – but the only choice I have is when to harvest, not whether or not I'm going to leave tree's in the RMZ.

**Do not support penalty for prior FREP-remove from list

Ecological benefits-subjective-don't support

Add to prioritization- first in time first in right

Greatest proportion of value is too subjective-don't support

Risk of conversion -subjective-don't support

Have not received a previous FREP- don't support

• Again, the forest certification criteria have nothing to do with how much and when a particular landowner suffered at least a partial regulatory take.

This is again trying to make some good guy landowners better than others, for reasons not related to the intent of the program. At a minimum this criteria should specifically include the established certification programs of SFI, FSC, and ATSF with options for the DNR to include others at some future date. Lack of detail in this proposal creates a lot of suspicion.

After reading the FREP prioritization list in the SLO Newsletter I cannot understand why a small landowner should not be able to receive compensation for his RMZ trees for five years after purchasing a timberland tract.

Just invested in a 138 acre tract 'encumbered' with many RMZ's and the timber stands need thinning. If I wait 5 years to thin I will miss the thinning 'window' and my stands will suffer with poorer health. So if I do thin for stand health within 5 years, then I will be unable to receive a FREP payment, this is not promoting good forest stewardship.

Also, I make my family living from harvesting the timber products that we grow. We need to harvest almost every year and we do. If we had signed up for a FREP in 2008 or 2009 we would not be eligible this year! That is ridiculous!! You are punishing the best stewards of the land with this potential rule!!

Certification-support

• Incorporating most or any of these criteria for ranking FREP applications (not grant requests) will

create administrative problems riff with potential conflicts and perceptions of unfairness or abuse. As most folks are likely able to qualify for "one or more" of these highly subjective criteria I suppose we could satisfy the political side of this issue by having criteria that allow nearly everyone to qualify for the "one or more" "highest priority" category & then ranks folks by application date – but then what's the point other than satisfying those that don't understand or have forgotten the legislative intent of the FREP? If you decide to go down this path you could simply revise the priority sentence to read: "The highest priority list of
applicants will be in priority by date submitted, and the highest priority shall be given to FREP applications that include one or more of the following conditions:"

Longest on the list should get paid first-"grandfather clause"

• FREP is about what I had to leave for regulatory reasons, not about what my neighbors inside or outside my watershed have/have not done. Some watersheds have more "smalls" than others – how would that be reconciled in this priority? This is a guilty or innocent by association scenario and has nothing to do with a program that was intended to provide at least 50% equity to individual landowners.

• Applicants who have waited the longest should be at the head of the line, whether they have waited 1 year or 3 years. If the program were fully funded this criteria would be moot. If the program was chronically underfunded (past and probably the near-term future), this criteria would eventually move everyone to the "highest priority", again becoming moot if those on the high priority list were then appropriately ranked according to application date. I.e. a lot of work/process for the same end result, unless the intent is to use all the other subjective criteria to rank those who have been on the wait list a long time???

Sub Issue: Form Letter SFL

Prioritization of FREP was not the original intent of Forest and Fish Rules. It was available to ALL small forest landowners. Unsubstantiated claims of illegal FREP requests.

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Valuation

SFL value established after harvest- support

Support quick determination of volume, grade (sort) to calculate easement value later

Use 631 a and B (IRS tax code) to establish value

DOR tables for value-support

****Keep the three current valuation processes

Sorting by “value” or percentage impact increases the incentive for “gaming” the system. Why should a landowner have priority for percentages of a particular size/shape/location of leave trees? The “value” is appropriately determined in the existing process whereby those contributing the most get paid the most – those particularly impacted on a percentage basis already get special treatment above the 50% threshold

Reimbursement

SFL Landowner keeps timber excise tax for fpa harvest (no payment to DOR) until DNR acquires FRE

Unstable Slopes

No unstable slopes-support

Support excluding unstable slopes and groundwater recharge areas- should be RMZ's only

1. Again, eliminating “unstable slopes and groundwater recharge areas” seems a betrayal of the promises – see also first bullet under Proposed Qualifying Timber change.

Funding

SFL Underfunding issue not an economic issue-has been underfunded from the beginning

High cost to administer- Appraisal funding (admin costs) has to be separate from FRE acquisition funding

Potential problem with reprioritization for each budget period-some may never get funded

Look for funding other than capitol funding. If capitol funds are used, they are funded with bonds as other capital projects, then this program should be fully funded.

Add statutory mandate requiring legislature to fund eligible FREs (pre 2010 legislation)

Acquisition Process

Complete harvest-support

Cruise area if funding after harvest-support

SFLO help landowners assess riparian area to set value for acquisition by other funding sources

Authorize landowner to contract their cruise for volume- reimbursed by DNR

Benefit of knowledge of using priorities of from budget proviso will not be seen through with short timelines

Getting the cruises done shortly after application is critical to the integrity of this program. I understand there are financial and regulatory language (60 days to make offer) problems that preclude more timely cruises. I hear a lot of complaints about a lot of the volume dropping out after one or more winters, cheating the landowner out of a portion of the volume they actually left and which was/should be eligible for compensation regardless of when the cruise is done as I read the requirements. The Department clearly has some risk if we don't recommend changes to this flawed system.

Completing all harvest activities before easement payment seems logical – what problem are we trying to resolve?

**Stop accepting quit claim deed

Other

Appeal process needs to be developed in case of disputed prioritization

Will DNR use authority as a state agency to answer constitutional question if a taking exists?-is funding then mandated by the legislature?-ask for AGO opinion or litigate

***No changes to program- go back to the intent of the program.

Summary recommendations: I sincerely believe that you should recommend to the Legislature they make some of your draft Eligibility and Process Provision changes, but that you indicate, upon further reflection and a bona-fide effort, moving to a priority process that includes more than the application date:

- is simply not workable or appropriate for a mitigation program,
- would cause more work and problems than they try to solve,
- would not meet the legislative intent, and above all,
- would unfairly pit one good landowner against another good landowner.

I further recommend that you advise the Legislature that the best thing that can be done to make FREP more affordable for the long term would be creating a regulatory incentive that encourages landowners to opt out of FREP eligibility with an attractive low impact 20 acre harvest option now being considered by the Legislature.

As one of those who have worked family forest issues for many years, I have to share a perhaps jaded opinion that these draft revisions feel/smell like the State has recognized they can't afford FREP and is looking for a way out of this commitment. Rather than be a party to another wrong, I hope each of you will have the courage to speak against this prioritization stuff, and help DNR move to a position of supporting our low impact 20-acre harvest options. Your decision will have a significant impact on more than just the relatively few landowners with FREP applications.

Subject to harvester tax, you're in?

The process for comment should allow able time for small land owners to respond. I would like all land owners to be treated with equal consideration and wish would hope you work with WFFA to achieve this end. Thank you.

Dear Sir:

Unlike like the Washington Farm Forestry Association to which I belong, I do not have a problem with the Forest Riparian Easement Program (FREP) prioritization. I think I agree with all or most all of the priorities. However I strongly condemn the underfunding of FREP. Maximum funding of 1.1 million dollars is simply not adequate, and it is unfair to load the burden of environmental protection for water, fish and wildlife on individual tree farmers. In addition I think that in the long run protection of the environment will save municipal and state government money and perhaps even generate additional tax revenue though tourism, fishing, better forest management etc.

I understand that the State of Washington is in a budget crunch and I believe it is time for executive and legislative leadership. The budget is not going to be balanced without tax increases. Therefore, increase the taxes and educate the selfish, short-sighted residents of Washington State as to the need for these increases. Hopefully the media (and perhaps even the schools) can be used to convince residents that state government programs are efficient and necessary, and that additional budget (program) cuts would be injurious.

No, I don't like taxes increases, but I am smart enough to want to keep the schools, state parks, clean water, good roads, assistance for the truly needy etc. that make Washington State a great place to reside.

Deputy Supervisor Turley and others:

I'm a "small" family forest owner with 100 acres of younger forestland, a Past President of the WFFA, and a current member of the Small Forest Land Owner Advisory Committee. My family hosted the Governor and numerous other governmental dignitaries, as well as all the Forest and Fish stakeholders, at our tree farm 6/5/2006 to sign the Forest and Fish HCP. Unlike some of my peers, I believed in the promises to "smalls" written in Forest and Fish. While I still believe the Forest and Fish legislation was written with the intent to accommodate the needs of "smalls", I no longer believe the stakeholders have the intent or the will to fulfill the Forest and Fish promises for alternative low impact harvest prescriptions – something like the 20-acre proposal is the only way this State can afford to keep its FREP promise. I also do not see any stakeholder commitment, especially in your current draft, to fulfill the promises of FREP which was the lynchpin for WFFA and thousands of small forest owners' reluctant support of Forest and Fish.

While there are some good things in the current draft that we've pushed in the past, there are a lot of bad and downright ugly elements in these draft changes that are a clear betrayal of the promises made. I recognize that the Department doesn't have a lot of wiggle room on this year's meager appropriation, but will only say that if at the end of this appropriation someone is kicked further down the long waiting list we will have failed our constituents and our legislators.

Regardless of what you do this year, you have been asked by the Legislature to provide recommendations for Legislation regarding the future of FREP. The recommendations you ultimately send back to the Legislature will be a reflection on how the Department views promises made to thousands of small forest owners, not what the Department thinks a few Legislators want to hear. Of all the regulators citizens have to deal with, the DNR generally gets credit in the field for more common sense and trying to do what is right – your final recommendations will be a real gut check for each of you and the Departments reputation with landowners.

Thank you for putting out an initial draft of your recommendations – this helps provide quality feedback. In the hopes that you will be encouraged or more empowered to provide the Legislature with your best professional judgment on the most appropriate non-political recommendations I offer the following specific comments on your current draft:

Upon reflection overnight it seems your efforts at fixing the problems are clearly overshadowed by the Prioritization stuff which I'm still hoping DNR (with push for those of you inside) will recommend against.

I think we got an inkling of some of the other problems/abuses you are trying to fix (i.e. new owner buying cheap, betting FREP would give windfall) - wish we had more insight into the specific problems you see like this so that we could provide more idea's on fixes - fixes that don't also punish the good guys. This single example you gave on steep slopes (FREP payment being more that recent purchase price) appears to be something worth fixing, but not at the expense of more legitimate claims.

I know Rick and WFFA have offered help/support to help with process and eligibility criteria, but I hope you heard a cry for "what are the problems we are trying to fix" and the extent to which these problems are inappropriately taking funds intended for smalls. In an effort to fix problems we often throw out a lot of good guys &/or add a lot of process in a generally failed attempt to keep folks from working the system.

I think we can be more help if we had clearer picture (examples) of the perceived abuses/unintended uses of the program - it's hard for folks to support/brainstorm fixes if they don't have you and Dan's insight into what the perceived problems are. It's in our best interest as landowners to protect the integrity of this program, I hope we can get rid of this misguided prioritization stuff so we can be more helpful with real problems.

As a low priority FREP, how long do I remain unfunded before I get my trees back?-clarify